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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT MAUL,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A05-0802-CR-76
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David A. Shaheed, Judge
The Honorable Shatrese Flowers, Commissioner
Cause No. 49G14-0606-FD-101496

October 3, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Robert Maul was convicted of possession of cocaine¹ as a Class D felony and was adjudicated to be an habitual substance offender² after a bench trial. He appeals, raising the following restated issues:

- I. Whether the trial court abused its discretion when it denied Maul's motion to dismiss pursuant to Indiana Criminal Rule 4(C); and
- II. Whether sufficient evidence was presented to support his conviction for possession of cocaine.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 4, 2006, at approximately 9:00 a.m., the police were dispatched to an apartment on Massachusetts Avenue in Indianapolis, Indiana on a report of a person calling for help. Officer Joseph Simmons was the first officer to arrive at the scene, and when he arrived, he knocked on the door of the apartment and spoke with an individual later identified as Maul. Officer Simmons told Maul that he was there to assist and attempted to persuade Maul to open the door, which was locked and barricaded with furniture. Maul refused, and after about fifteen minutes of speaking with Maul, Officer Simmons slipped his business card under the door to prove he was actually a police officer. By this time, more officers had arrived at the scene at the request of Maul.

Maul finally unlocked the door to allow the officers inside. Officer Simmons entered the apartment and encountered Maul in the living room with a knife in his hand. The officer ordered Maul to drop the knife, and he complied. Officer Simmons then handcuffed Maul

¹ See IC 35-48-4-6.

for officer safety. In speaking with Maul, Officer Simmons discovered that Maul was a paranoid schizophrenic and had been off of his medication for five days. Three other officers also entered the apartment. Officer Ethan McGivern was the last to enter and his job was to secure the inner and outer perimeter of the apartment for officer safety purposes. As he approached to check behind the door, which was still half-closed because of the barricade of furniture, Officer McGivern observed what he suspected was crack cocaine. He believed the item he observed to be crack cocaine because in his training and experience, he had come in contact with bindles of crack cocaine, which is street terminology for the packaging the drugs in the corners of plastic baggies. Officer McGivern gave the suspected drugs to Officer Simmons, and upon later testing, it was determined to be cocaine.

Officer Simmons then placed Maul under arrest and transported him to Wishard Hospital for a psychiatric evaluation. After the evaluation, Maul was taken to be processed for his arrest. The State charged Maul with possession of cocaine as a Class D felony and, later, amended the information by adding an habitual substance offender allegation. Prior to trial, Maul filed a motion to dismiss, claiming that the State had failed to bring him to trial within one year of his arrest in violation of Indiana Criminal Rule 4(C). A bench trial was held on December 21, 2007, and Maul renewed his motion to dismiss. The trial court denied the motion, noting that it had previously heard the motion and was “denying [it] again.” *Tr.* at 2. After the conclusion of evidence, Maul was convicted of possession of cocaine as a Class D felony and also found to be an habitual substance offender. Maul now appeals.

DISCUSSION AND DECISION

² See IC 35-50-2-10.

I. Criminal Rule 4(C)

We review a trial court's denial of a motion to dismiss for an abuse of discretion. *Werner v. State*, 818 N.E.2d 26, 28 (Ind. Ct. App. 2004), *trans. denied* (2005). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* The right of an accused to a speedy trial is guaranteed by the Sixth Amendment to the United State Constitution and by Article I, Section 12 of the Indiana Constitution. *State v. Jackson*, 857 N.E.2d 378, 380 (Ind. Ct. App. 2006). "[T]he provisions of Indiana Criminal Rule 4 implement the defendant's speedy trial right." *Id.* Specifically, Criminal Rule 4(C) provides in pertinent part:

No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar

Ind. Crim. Rule 4(C). Under this rule, the State has an affirmative duty to bring the defendant to trial within one year of being charged or arrested, but allows for extensions for various reasons. *Cook v. State*, 810 N.E.2d 1064, 1065 (Ind. 2004). "'The defendant does not have an obligation to remind the State of this duty or to remind the trial court of the State's duty.'" *Jackson*, 857 N.E.2d at 380 (quoting *Staples v. State*, 553 N.E.2d 141, 143 (Ind. Ct. App. 1990), *trans. denied*).

Maul argues that the trial court abused its discretion when it denied his motion to dismiss pursuant to Criminal Rule 4(C). He contends that the State did not bring him to trial within one year of his arrest date, and that although he was incarcerated on another charge

for a period of time, the delay should not be attributed to him. He claims that the State should have known of his whereabouts because he was incarcerated on a different cause in another Marion County Criminal Court. Maul alleges that because none of the delay in bringing him to trial within one year of his arrest date is attributable to him, the trial court should have granted his motion to dismiss.

Maul was arrested and charged with possession of cocaine on June 4, 2006. Thus, the State was required to bring Maul to trial by June 4, 2007 unless the one-year period was extended by delays not chargeable to the State. The State did not bring Maul to trial until December 21, 2007. However, much of this delay occurred as a result of Maul failing to appear for a hearing on October 25, 2006 due to his incarceration in a different case. On June 7, 2006, a pretrial conference was held, and jury trial was set for August 9, 2006, which was later vacated and reset for November 15, 2006. This jury trial date was also later vacated, and the case was set for an evidentiary hearing on October 25, 2006. Maul did not appear for this evidentiary hearing, and a warrant was issued for his arrest. On August 29, 2007, the State discovered that Maul had been incarcerated in the Department of Correction on a separate charge. A bench trial was then held on December 21, 2007.

A similar situation was addressed in *Werner*, 818 N.E.2d 26. There, the defendant failed to appear for an initial hearing on January 2, 2001, and it was later determined that he had failed to appear because he was incarcerated in another county's jail on unrelated charges. *Id.* at 28. He was released from his incarceration on May 23, 2001. *Id.* The defendant did not notify the trial court in writing of his incarceration, although two telephone calls were made, one to the clerk's office and the other to the bailiff, to advise that the

defendant was incarcerated in another county's jail. *Id.* He later filed a motion to dismiss under Criminal Rule 4(C), which the trial court denied. *Id.* On appeal, this court held that, because the defendant did not provide written notice to the trial court of his incarceration, the 142-day delay between his failure to appear and his release from his incarceration in the other county was attributable to him, and the "Rule 4(C) clock was tolled." *Id.* at 32. In making its decision, this court distinguished *Rust v. State*, 792 N.E.2d 616 (Ind. Ct. App. 2003), *trans. denied*, which had held that a defendant who provided written notice to the trial court that he was incarcerated in a different county on unrelated charges was entitled to dismissal because the State was required to proceed in a timely manner after receiving such notice. *Id.* at 620.

In the present case, Maul failed to appear for a hearing on October 25, 2006 and was then absent for almost a year until the State discovered that he was incarcerated in the Department of Correction on another charge. At no time during this absence did Maul give any notice, written or telephonic, to the trial court or the State that he was incarcerated and unable to appear for that reason. We therefore conclude that the 308-day delay between when Maul failed to appear on October 25, 2006 and when the State found out that he was incarcerated on August 29, 2007 was attributable to Maul and extended the one-year deadline to bring him to trial by that amount. Maul's bench trial was held on December 21, 2007, which was well before the new deadline. We also conclude that Maul's incarceration, due to charges in another Marion County Criminal Court, did not change the fact that he failed to provide any notice of his incarceration to the State or trial court. The trial court did not abuse its discretion when it denied Maul's motion to dismiss.

II. Sufficiency of the Evidence

Maul argues that insufficient evidence was presented to support his conviction for possession of cocaine. Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523.

In order to convict Maul of possession of cocaine as a Class D felony, the State was required to prove that he knowingly or intentionally possessed cocaine. IC 35-48-4-6(a). The possession of contraband may be either actual or constructive. *See Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004). “Actual possession occurs when a person has direct physical control over the item.” *Hayes v. State*, 876 N.E.2d 373, 375 (Ind. Ct. App. 2007), *trans. denied* (2008). Here, Maul did not have direct physical control over the crack cocaine when the police discovered it in his apartment. Constructive possession occurs when the State shows that the defendant has both (1) the intent to maintain dominion and control over the drugs and (2) the capability to maintain dominion and control over the drugs. *Gee*, 810 N.E.2d at 340. “The proof of a possessory interest in the premises on which illegal drugs are found is adequate to show the capability to maintain dominion and control over the items in question.” *Id.* Because Maul was in possession of the premises where the crack cocaine was discovered, his capability to maintain dominion and control over the drugs was supported by sufficient evidence.

In order to prove that a defendant had the intent to maintain dominion and control over the contraband, the State must prove that the defendant had knowledge of the presence of the drugs. *Id.* at 341. This knowledge may be inferred from either the exclusive possession of the premises or, if the possession is not exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. *Richardson v. State*, 856 N.E.2d 1222, 1228 (Ind. Ct. App. 2006), *trans. denied* (2007). The additional circumstances that will support such an inference include: (1) incriminating statements made by the defendant; (2) attempted flight or furtive gestures; (3) location of substances like drugs in settings that suggest manufacturing; (4) proximity of contraband to the defendant; (5) location of the contraband within the defendant's plain view; and (6) the mingling of the contraband with other items owned by the defendant. *Gee*, 810 N.E.2d at 341.

Here, the evidence presented showed that the possession of the apartment where the drugs were found was exclusive as Maul was the only one who lived there and no one else was present when the police found the crack cocaine behind the door. Although at trial Maul testified that others had been in his apartment the prior evening, the trial court was not required to believe his account of the events. Even if possession of the premises was deemed not to be exclusive, evidence was presented that the drugs were found in the same room as Maul was located, Officer McGivern testified that he did not have to move any furniture or any other items to see the drugs on the floor, and the drugs were found near items of furniture belonging to Maul that he had used to barricade the door. We therefore conclude that sufficient evidence was presented to support a reasonable inference that Maul constructively possessed the crack cocaine found in his apartment and to support his conviction. Maul's

argument to the contrary is merely a request to reweigh the evidence, which we cannot do.

Williams, 873 N.E.2d at 147.

Affirmed.

VAIDIK, J., and CRONE, J., concur.